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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

THE CITY AND COUNTY OF SAN  
 FRANCISCO, CALIFORNIA and THE  
 PEOPLE OF THE STATE OF  
 CALIFORNIA, Acting by and through San  
 Francisco City Attorney DENNIS J.  
 HERRERA,

Plaintiffs,

v.

PURDUE PHARMA L.P., et al.

Defendants.

Case No. 3:18-cv-07591-CRB-JSC

**JOINT STATUS UPDATE**

**Judges:** Hon. Charles R. Breyer and Jacqueline  
 Scott Corley

**Courtroom:** Via Videoconference

**Hearing Date:** September 22, 2021

**Hearing Time:** 9:30 a.m.

The parties respectfully submit this Joint Status Update in advance of the Court's discovery conference scheduled for September 22, 2021, at 9:30 a.m.

### **JOINT STATEMENT REGARDING SCHEDULE AND DISPUTE RESOLUTION**

The parties jointly report on a number of case developments that have taken place since the last conference with the Court.

#### **I. Case Schedule**

On June 15, the Court entered the Parties' Joint Stipulation and Amended Order to Modify Case Schedule. Doc. 572. The specific dates are reflected in the chart below:

Event	Current Schedule
Custodial Productions Substantial Completion Deadline	June 4, 2021
Document Production Substantial Completion Deadline	June 21, 2021
Plaintiff's Expert Reports	October 5, 2021
Close of Fact Discovery	November 12, 2021
Defendants' Expert Reports	December 2, 2021
Plaintiff's Expert Rebuttal Reports	December 23, 2021
Close of Expert Discovery	January 14, 2022
Motions for Summary Judgment and <i>Daubert</i> Motions	January 24, 2022
Oppositions to Motions for Summary Judgment and <i>Daubert</i> Motions	February 25, 2022
Replies in Support of Motions for Summary Judgment and <i>Daubert</i> Motions	March 11, 2022
All Trial Materials Due	March 24, 2022
Final Pretrial Conference	April 4, 2022
Trial	April 25, 2022

#### **II. Update on Status of Settlement Among Stipulating Parties**

On January 26, 2021, the Court stayed the proceedings as to the Stipulating Defendants.<sup>1</sup> On August 9, 2021, the Stipulating Parties filed a Fourth Joint Notice Regarding Update on Status of Settlement, explaining the mechanics and timeline for the settlement process. Doc. 616. The Court ordered the Stipulating Parties to submit a further update to the Court on September 20. Doc. 624. The Stipulating Parties did so on September 20, 2021 (Doc. 658), reporting that: "The

<sup>1</sup> The Stipulating Defendants are distributors McKesson Corporation, AmerisourceBergen Drug Corporation, and Cardinal Health, Inc.; and manufacturer Johnson & Johnson, its subsidiary Janssen Pharmaceuticals Inc. f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. and its former affiliate Noramco, Inc. (with Plaintiff, the "Stipulating Parties").

1 political subdivisions have until January 2, 2022 to decide whether to become initial Participating  
 2 Subdivisions. The Stipulating Defendants will then have up to 30 days to determine whether a  
 3 sufficient number of political subdivisions have agreed to participate in the settlement and to  
 4 inform the settling parties whether they intend to proceed with the settlement (the “Reference  
 5 Date”). Following the Reference Date, if the Defendants elect to proceed, the parties will execute  
 6 consent judgments in each state.”

7 On August 20, Non-Stayed Defendants filed a Motion to Stay, asking the Court to stay the  
 8 entire case until the proposed nationwide settlements are either finalized or they fail. Doc. 627.  
 9 Plaintiff timely filed its response in opposition to Non-Stayed Defendants’ motion on September  
 10 3. Doc. 647. On September 8, Plaintiff filed a Notice of Settlement Progress, noting that on  
 11 September 4 the Stipulating Defendants agreed to proceed with the national settlement process.  
 12 Doc. 648. Non-Stayed Defendants did not file a reply in support of their motion.

### 13 **III. Discovery Orders Issued Since Prior Conference (Docs. 635, 638, 644, 655)**

14 The Court issued four discovery orders shortly before and immediately after the August  
 15 30 status conference.

16 The first discovery order (Doc. 635) addressed three discovery disputes briefed by  
 17 Plaintiff and Walgreens (Docs. 622, 623, 626). In it, the Court: (A) ordered Walgreens to  
 18 produce Paul Blankenship’s custodial files by September 3; (B) ordered Walgreens to produce  
 19 responsive documents from the non-personal corporate email accounts of four Walgreens  
 20 custodians<sup>2</sup> by September 16; and (C) directed Plaintiff and Walgreens to confer regarding  
 21 Walgreens’ internal complaint database (APIS) by August 26.

22 The second discovery order (Doc. 638) addressed Plaintiff’s motion to compel  
 23 supplemental interrogatory requests from Teva (Doc. 629). The Court ordered Teva to  
 24 supplement its responses to Interrogatories No. 4, 11, 15, by September 17. Doc. 638.

25 The third discovery order (Doc. 644) addressed two additional discovery dispute letters  
 26 (Docs. 628 and 630) as well as additional issues raised in the previous status report (Doc. 639)

27 \_\_\_\_\_  
 28 <sup>2</sup> The specified custodians are Jeff Bruneteau, Jason Cunningham, Hieu-Ngoc Huynh, and Calvin Yeung.

1 and discussed at the hearing. The Court ordered: (A) Allergan to supplement responses to  
 2 Interrogatory Nos. 1-2 and 3-4 consistent with the agreements outlined in Plaintiff and Allergan's  
 3 submission by September 13; (B) Allergan and Teva to provide additional information<sup>3</sup> in a  
 4 supplemental response by September 17; (C) Endo to comply with a number of discovery  
 5 obligations on or by September 13; and (D) Plaintiff and Walgreens to meet and confer by  
 6 September 7 as to "whether [Walgreens'] delayed production" of hard-copy due diligence  
 7 documents "warrants an extension of time for certain" of Plaintiff's "expert reports" and to have  
 8 their "respective technical experts meet and confer" by September 3 regarding the searchability of  
 9 Walgreens' internal complaint database.

10 The fourth discovery order (Doc. 655) granted Defendants Endo Health Solutions Inc.,  
 11 Endo Pharmaceutical Inc., and Par Pharmaceutical Companies Inc.'s motion for Extension of  
 12 Time to Comply with Order Following August 30, 2021 Discovery Conference and extended the  
 13 deadlines for (1) producing Compliance documents; (2) completing an investigation into  
 14 SpeakerNet data files; and (3) finishing an investigation into potential sources of HCP payments,  
 15 until September 27, 2021.

16 **IV. Plaintiff-Walgreens Agreement Re: Deadline Extension for Certain of Plaintiff's**  
 17 **Expert Reports**

18 Following the last status conference, and to address Walgreens' delay in producing hard-  
 19 copy prescriptions, Plaintiff and Walgreens have agreed to stipulate to: (1) a two-week extension  
 20 (to October 19) for one of Plaintiff's expert reports addressing prescription due diligence; and (2)  
 21 a supplemental report from a separate expert, Craig McCann, addressing only Walgreens'  
 22 prescription due diligence, to be filed one week later (October 26). Neither the extension nor the  
 23 supplemental report will affect the deadline for Walgreens' responsive expert reports. Plaintiff  
 24 reserves the right to seek relief related to the 2,693 unproduced hard copy prescriptions—  
 25 including but not limited to an adverse inference of no due diligence—at another time.  
 26 Walgreens opposes any further relief.

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27 <sup>3</sup> Specifically, this information consisted of: (1) product name, (2) FDA NDC code, (3) gross  
 28 dollar sales for each opioid by year, and (4) San Francisco and California sales volume by number  
 of individual units for both the branded and generic opioids sold, either by Allergan or Teva,  
 including through entities that have been divested to Teva.

1 **V. Discovery Motions**

2 There are no fully briefed discovery disputes before the Court.

3 **PLAINTIFF'S STATEMENT**

4 **I. Plaintiff's Productions**

5 Plaintiff has produced more than 630,000 documents in this action, consisting of more  
6 than 4 million pages of information retrieved from 39 individual custodians, numerous common  
7 network drive spaces, websites and massive database collections. The production includes emails  
8 dating back to 2001 and databases that reach as far back as 1997. After substantially completing  
9 production for the existing custodial sources in June, Plaintiff has now completed re-reviewing  
10 documents it had set aside under a claim of privilege. In June and July Plaintiff produced more  
11 than 50,000 additional documents it had initially withheld. As of September 20, Plaintiff will  
12 have de-privileged and produced just over 70,000 total documents,<sup>4</sup> the majority of which were  
13 produced by the end of July.<sup>5</sup>

14 Defendants did not raise a single complaint about this process in June, July, or August.  
15 Now that Plaintiff has pursued relief for Walgreens' admittedly late productions, however,  
16 Walgreens' counsel has all of a sudden cried foul and demanded an extension of all schedule  
17 deadlines by at least two months. Their complaints ignore two critical facts. First, in the  
18 stipulation and proposed order to modify case schedule, which Judge Breyer signed in June,  
19 Plaintiff made perfectly clear that, even after the substantial completion deadline, Plaintiff would  
20 still be producing: "(1) privilege and redaction review documents (i.e., documents set aside for  
21 privilege that could be produced after further review and/or redaction) and (2) documents that  
22 require re-review because of a coding issue or technical issue identified during the initial review."  
23 Doc. 572 at 2 n.1. These are precisely the documents that Plaintiff continued producing. Second,

24  
25 <sup>4</sup> Several thousand of these custodial documents are duplicates or near duplicates of documents  
26 that Plaintiff had already produced from non-custodial sources by the substantial completion  
27 deadline.

28 <sup>5</sup> Plaintiff made some privilege downgrade productions from the files of custodians who were  
about to be deposed. Plaintiff acknowledges this was not ideal and apologizes for any  
inconvenience. However, Plaintiff promptly addressed the matter and worked to provide  
Defendants' counsel alternate deposition dates as quickly as possible.

1 the June deadline was for *substantial* completion—not final completion—and by that deadline,  
 2 Plaintiff had produced nearly 90% of all the documents it would ultimately produce. Defendants’  
 3 manufactured outrage is misplaced.

4 In addition, throughout the course of this discovery process, Plaintiff became aware of  
 5 and identified two more custodians, Dr. Kathleen Chung and Dr. Claire Horton.<sup>6</sup> As of Friday,  
 6 September 17 Plaintiff is substantially finished producing documents and materials from those  
 7 individuals’ files and will finish its privilege review in the coming week. Plaintiff has completed  
 8 production of documents for every other custodian.

9 Defendants have raised a litany of concerns below. The parties are meeting and  
 10 conferring about most of them. A few require a brief response:

11 **Police investigation files.** There is no reason to think that any investigation files are  
 12 “missing,” as Defendants claim. After an intensive search, Plaintiff spoke to Defendants on  
 13 August 5, explaining that it located three investigation files and searched thoroughly for the  
 14 others. Plaintiff answered all of Defendants’ questions about those files at that time, then  
 15 produced them on August 10. More than a month later, Defendants asked Plaintiff to repeat its  
 16 answers from August in writing. Plaintiff addressed that request and explained, again, that its  
 17 production is “complete[.]”

18 **Questions following deposition.** Below, Defendants list six issues they raised following  
 19 the deposition of Dr. Michelle Geier. These six issues were presented in a letter sent the evening  
 20 of Friday, September 20. Plaintiff disagrees with Defendants’ assertions and characterizations  
 21 and will respond to their letter.

22 **Plaintiff’s amended responses to Walgreens’ third set of interrogatories.** Plaintiff  
 23 served amended responses to two interrogatories on June 11. The responses reflected significant  
 24 efforts and fully complied with the Court’s order. Walgreens seemed to agree, as they raised no  
 25 objection for two and half months. Then, on August 24, Walgreens’ counsel emailed a series of  
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27 <sup>6</sup> Defendants suggest below that Plaintiff will be withholding documents from Drs. Horton and  
 28 Chung. That is not true. Dr. Horton holds separate appointments at the San Francisco Department  
 of Public Health and UCSF (a non-party). Plaintiff does not control and will not be producing  
 documents maintained by UCSF.

1 questions, which Plaintiff attempted to answer, and asked if Plaintiff's responses were  
 2 "complete." In response, Plaintiff explained that "[w]e have no supplement at this time, and we  
 3 are not withholding any information." It is unclear what further relief or information Walgreens  
 4 seeks.

## 5 **II. Defendants' Discovery Deficiencies and Other Issues Requiring the Court's** 6 **Attention**

7 Plaintiff addresses the following select few of Defendants' discovery deficiencies that  
 8 require emphasis.

### 9 **A. Walgreens Refuses to Engage with Plaintiff to Complete its Production of** 10 **Internal Complaint and Investigation Files.**

11 On August 18, 2021, Plaintiff filed a motion to compel Walgreens to (i) complete its  
 12 production of documents related to a whistleblower complaint regarding Walgreens' national  
 13 dispensing policy; and (ii) produce complaint and investigation files from the internal complaint  
 14 database(s) where they are stored. Plaintiff seeks production of complaint and investigation files  
 15 related to Walgreens' national policies on a nationwide basis, while seeking such files related to  
 16 individual instances of drug diversion on only a regional basis. Doc. 626. Plaintiff had sought  
 17 the discovery requested both in its initial document requests (served in May 2020) and more  
 18 recent, narrowly tailored requests (served in May 2021). The parties have traded numerous letters  
 19 and emails about these issues and have conferred by video several times (July 9, July 30, August  
 20 13, August 26, and September 1). This motion remains unresolved.

#### 21 **1. Walgreens' production of materials regarding the whistleblower** 22 **complaint is incomplete.**

23 On July 16, Walgreens represented that its production of documents related to the  
 24 whistleblower complaint was complete. However, in the parties' August 18 joint discovery  
 25 dispute letter, Walgreens represented to the Court that it was "working to confirm whether any  
 26 additional responsive documents relating to the complaint . . . Plaintiff identified exist." Doc. 626  
 27 at 5. On August 23—that is, after briefing had completed—Walgreens produced a handful of  
 28 additional documents, including limited internal correspondence and a screen capture of a case  
 report from Walgreens' internal complaint database. After reviewing these documents, Plaintiff

1 then identified multiple categories of responsive information that Walgreens had not produced.  
 2 Walgreens has ignored Plaintiff's many inquiries about them. At minimum, the following  
 3 categories of documents related to the whistleblower complaint remain outstanding:

- 4 • ***Documents addressing “‘institutional’ issues [that] were being further reviewed by [Employee Relations] and the company.”*** WAGCASF00314276. Plaintiff identified  
 5 internal correspondence regarding the whistleblower complaint in which Walgreens  
 6 indicated it was conducting a “further” investigation of “institutional” concerns about its  
 7 dispensing policy. Plaintiff requested documents reflecting that review in correspondence  
 8 sent on August 25, September 2, and September 8. Walgreens did not respond until  
 9 September 17 (shortly before this report was to be exchanged). In its response, Walgreens  
 10 claimed that the investigation consisted entirely of witness statements predating the  
 11 representation that “‘institutional’ issues *were being further reviewed.*” Walgreens has  
 12 not confirmed what, if anything, it has done to reach a conclusion that appears to conflict  
 13 with the plain language of the document in question.
- 14 • ***Documents reflecting “training” conducted in response to whistleblower complaint.***  
 15 WAGCASF00314276. Internal correspondence Walgreens produced suggests that a  
 16 training took place in response to the whistleblower's complaint about application of  
 17 Walgreens' national dispensing policy. Plaintiff requested documents reflecting this  
 18 training on August 25, September 2, and September 8. Walgreens responded for the first  
 19 time on September 20, claiming it had conducted a “reasonable, diligent search,” but  
 20 would not explain what that search entailed.
- 21 • ***“[R]espon[se] to [whistleblower] in writing to address his concerns.”***  
 22 WAGCASF00314276. Similarly (and unsurprisingly), Walgreens' production revealed  
 23 that Walgreens responded in writing to the whistleblower's complaint. Plaintiff requested  
 24 such correspondence on August 25, September 2, and September 8. Once again,  
 25 Walgreens did not respond until September 17. Plaintiff is still evaluating this response,  
 26 but notes that Walgreens offered only to look for the correspondence from one individual  
 27 (rather than, for example, searching Mr. Yagar's emails).
- 28 • ***Case summary cataloged under different case number.*** At the September 10 deposition  
 of a Walgreens investigator, the witness testified that he understood there to be *two*  
 separate case reports in the internal complaint database related to the whistleblower  
 complaint filed at case numbers 8239138 and 1195618. Walgreens had only produced the  
 case report associated with case number 8239138 (on August 23). On September 10,  
 Plaintiff requested that Walgreens produce the case report associated with case number  
 1195618 (and its attached documents). On September 17, Walgreens represented that  
 “[t]here is no additional APIS file.” Similarly, in a previous draft of this status report,  
 Walgreens again represented that “Plaintiff's representations regarding the two alleged  
 case numbers are incorrect” and that there were no additional documents to produce.  
 During a meet and confer on September 20, Walgreens would not say whether it had  
 actually queried the two different case numbers in the database. Then, on September 21,  
 Walgreens told Plaintiff that it actually had identified “additional information” from the  
 other case number—which calls into question Walgreens' repeated representations that its  
 searches have been comprehensive and its productions complete.

26 All of these documents are responsive to Plaintiff's requests, highly relevant, and fall  
 27 within the universe of documents that Walgreens agreed to produce. Plaintiff will attempt to  
 28 confer with Walgreens again before the hearing, and may seek further relief at that time.

1                   **2. After opioid litigation had begun, Walgreens degraded the search**  
 2                   **functionality of its internal complaint database and now refuses to**  
 3                   **work with the software vendor to export files.**

4           Pursuant to the Court’s order (Doc. 644), Plaintiff, Walgreens, and their respective  
 5           technical experts conferred on September 3 regarding how to search for and export files from  
 6           Walgreens’ internal complaint and investigation database. Unfortunately, the parties remain at  
 7           impasse, as Walgreens refuses to facilitate the export of, *inter alia*, any complaints about its  
 8           national dispensing policy. As the MDL court recognized in a similar context, national discovery  
 9           on these issues is warranted because “[w]hen a Pharmacy Defendant issues a national policy, it  
 10          should expect feedback from its pharmacies.” Doc. 626-9 (MDL Doc. 3689) at 3. “It does not  
 11          matter which pharmacy the feedback comes from. The feedback is *necessarily national in scope*  
 12          *because it implicates the effectiveness of the national policy* . . .—an issue that is the very heart  
 13          of this litigation.” *Id.*

14          Prior to the technical meet and confer, Plaintiff had understood that the internal complaint  
 15          database at issue was a deployment of NAVEX Global’s EthicsPoint. During a previous meet  
 16          and confer on August 27, Walgreens’ counsel had indicated that she was under the same  
 17          impression, but that she was not certain. Plaintiff thus asked for confirmation. At the same time,  
 18          Plaintiff conducted research regarding EthicsPoint’s export functionality and confirmed that a  
 19          user may indeed export materials *en masse*. It was not until the first few minutes of the parties’  
 20          September 3 technical meet and confer (many weeks after the discussion began) that Walgreens  
 21          revealed that the internal complaint software in use from 2011 to 2019 was *not* a deployment of  
 22          NAVEX Global’s EthicsPoint, but an offering from Appriss, Inc. Plaintiff’s technical expert thus  
 23          was unable to conduct any research regarding the software prior to the technical meet and confer.

24          During the technical meet and confer, Walgreens’ experts explained that, in September  
 25          2019, Walgreens transitioned to a new database (hosted by NAVEX) and transferred an  
 26          unspecified portion of complaint and investigation files from the old Appriss system into a new  
 27          NAVEX database.<sup>7</sup> Although it was not entirely clear, Walgreens’ experts suggested that user

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<sup>7</sup> Since the meet and confer, Walgreens has not clarified exactly what portion of files were transferred, though a witness Plaintiff deposed on September 10 testified that he was under the

1 search functionality was reduced at the time Walgreens transitioned databases in 2019—or that it  
2 became more difficult to export complaints from the database, given that Walgreens had  
3 effectively cut ties with Appriss. To be clear, Walgreens was a defendant in the MDL and several  
4 other opioid litigations when it transitioned away from Appriss without, to Plaintiff’s knowledge,  
5 notifying a single plaintiff. According to Walgreens’ experts, who confirmed they did not review  
6 any manuals or documentation about the Appriss platform, at present, search and extraction of the  
7 complaint and investigation files Plaintiff seeks would require that Walgreens make a request to  
8 Appriss. Walgreens’ technical experts confirmed that they had not been in touch with Appriss.

9       Following the meeting, Plaintiff asked Walgreens’ experts to work with Appriss to  
10 determine whether Appriss could run search terms through the 2011 to 2019 database and/or  
11 export the complaint files to an e-discovery platform (in which search terms could be run).  
12 Plaintiff also requested that Walgreens (i) produce the last operative version of Walgreens’  
13 contract with Appriss setting forth the current relationship with respect to data export; and (ii)  
14 produce the software manual, instructions, technical notes, or the like explaining how data is  
15 stored. Walgreens refused Plaintiff’s requests and directed Plaintiff to serve a subpoena on  
16 Appriss. On September 17, Plaintiff did so, though it appears likely that if Walgreens requested  
17 that Appriss export the data at issue (or if Walgreens had not decommissioned the database  
18 without notice), no subpoena would be necessary.

19       Walgreens will argue that the complaint files Plaintiff seeks are duplicative of its custodial  
20 productions. They are not, for at least three reasons. First, at a minimum, the detailed,  
21 investigation summary forms—which includes critical information such as the investigations’  
22 ultimate disposition—are *not* found in custodial emails. Second, the database contains all  
23 relevant documents dating back to at least 2010; the date ranges for Walgreens’ custodial  
24 productions, in contrast, is quite limited due to, among other reasons, Walgreens’ retention  
25 policy. *See generally* Doc. 623. Third, the scope of Walgreens’ custodians is also very limited.  
26 Indeed, Walgreens has not produced documents from its MDL compliance custodians on a

27  
28       \_\_\_\_\_

impression that all files had been migrated to NAVEX. Walgreens also refuses to search for responsive complaints from the current NAVEX database.

1 national basis. Walgreens also misled Plaintiff about the responsibilities of the investigator  
 2 custodian selected here. Walgreens suggested that the investigator Plaintiff chose as a custodian  
 3 had responsibly for San Francisco from 2000 to present. While Plaintiff's independent research  
 4 this summer suggested that this was not true, it was only at the investigator's deposition on  
 5 September 10, that Plaintiff learned that he covered San Francisco for only two years: 2019 to  
 6 2021. Walgreens' representations have shifted over time, but its comments below about the  
 7 investigator's responsibilities within "California" are a red herring, and say nothing of his  
 8 responsibility for San Francisco. Setting aside deficiencies in Walgreens' custodial productions, it  
 9 is clear that there is no substitute for searching the actual complaints database.

#### 10 **B. Allergan and Teva**

11 On September 13, 2021, pursuant to the Court's Motion to Compel Order, Allergan served  
 12 its Second Amended and Supplemental Responses to Plaintiff's First Set of Interrogatories (Nos.  
 13 1-5, 9). In its amended responses to Plaintiff's marketing interrogatories, Allergan identified over  
 14 one hundred additional responsive documents. Plaintiff is currently reviewing these materials in  
 15 anticipation of providing its marketing experts with information necessary to draft expert reports.

16 On September 17, 2021, Plaintiff received supplemental responses from Allergan and  
 17 Teva to Plaintiff's Interrogatory Nos. 6 and 4, respectively, regarding sales data, and  
 18 supplemental responses by Teva to Plaintiff's marketing interrogatories (Nos. 8, 11, and 15), as  
 19 stated by the Court's Motion to Compel Order. Plaintiff will review any responsive materials  
 20 identified in the supplemental responses for relevant information to provide its experts.

21 While Plaintiff is presently working expeditiously to review these newly identified  
 22 materials, it notes the limited timeline between Teva and Allergan's supplemental responses and  
 23 the quickly approaching expert report deadline of October 5. Plaintiff is working to provide any  
 24 new and relevant information with sufficient time for the experts to incorporate the information  
 25 into their reports. Given the volume of newly disclosed information, Plaintiff will seek relief with  
 26 the Court, should it be necessary.

1           **C.      Endo/Par**

2           On August 30, 2021, this Court ordered Endo to complete its investigation of multiple  
3 document sources identified by Plaintiff no later than September 13, 2021. Doc. 644. On  
4 September 20, 2021, the Court entered an order granting Endo’s motion for an extension of time  
5 (“Motion for Extension”), continuing the deadline for (1) producing Compliance documents; (2)  
6 completing an investigation into SpeakerNet data files; and (3) finishing an investigation into  
7 potential sources of HCP payments, until September 27, 2021, which is merely eight days before  
8 Plaintiff’s expert reports are due.

9           Endo’s ongoing failure to make these and other long overdue productions in compliance  
10 with this Court’s orders has greatly prejudiced Plaintiff’s ability to prepare for trial in this matter.  
11 Below is a summary of the most troubling discovery issues that have arisen since the Parties last  
12 appeared before this Court.

13                   **1.      Endo’s Settlement in New York State Court**

14           In order to avoid a New York state court’s ruling on its orders to show cause why  
15 sanctions, including terminating sanctions, should not be levied against Endo and its counsel,  
16 APKS and Redgrave LLP, for their discovery abuses, Endo entered into a \$50 million settlement  
17 to resolve the claims against it in that jurisdiction on September 9, 2021. The orders to show  
18 cause were supported by documents and data produced in response to discovery ordered in this  
19 case, much of which is still incomplete.

20                   **2.      Endo’s New Counsel**

21           In an apparent effort to distance itself from both recent court orders indicating that Endo  
22 and its counsel engaged in discovery abuse, and purportedly in response to this Court’s order to  
23 meet discovery obligations by September 13, 2021, Endo informed Plaintiff on September 15,  
24 2021, that it has now also retained the law firm of Skadden, Arps, Slate, Meagher & Flom LLP  
25 (“Skadden”), whose attorneys assert that they are poised to “get up to speed” in the “last several  
26 days” and remedy Endo’s years of discovery abuses. However, in the same correspondence, Endo  
27 reiterated that it had no intention of meeting this Court’s deadlines and merely says it “expects” to  
28 be able to produce “additional” documents by September 27, 2021.

### 3. Documents Previously Withheld as “Nonresponsive”

After facing terminating sanctions in two related cases for withholding plainly relevant and responsive documents, Endo and its new counsel propose creating a repository of documents that have been withheld as non-responsive for the last several years so plaintiffs in the various cases can take on the burden themselves of identifying responsive documents and then asking Endo that they be formally produced. The Endo Defendants say that the platform will be hosted at their expense. Plaintiff will hear Endo out on this unorthodox proposal, but, at minimum, any and all costs of searching, retrieving, and producing documents must also be borne solely by the Endo Defendants, who have already wasted countless resources and hours of attorney time with their efforts to avoid producing these same documents.

### 4. Missing Data and Documents

For months, Plaintiff was required to scour through Endo’s documents to identify sources of missing data. As noted above, the Court has ordered Endo to complete its investigation and productions from these sources by September 13, 2021, but Endo has not done so. The status as Plaintiff understands it is as follows.

#### a. Compliance Documents and Navigator Data

Plaintiff has pressed Endo for more information regarding the location of compliance documents such as Reports of Suspected Diversion and other methods for tracking suspicious orders, including whether suspected diversion incidents may be tracked in two additional CRM systems, Engage and Navigator. The Court ordered that any additional documents from these sources be produced by September 13, 2021. On September 10, 2021, Endo represented it has identified some 90 boxes of hardcopy compliance documents not previously produced and which were not adequately reviewed. Doc. 650. On September 15, 2021, Endo reported to Plaintiff that it has identified: (1) the hard copy documents; (2) additional electronically stored compliance documents; and (3) “message” and “reaction” fields in its IMS/Navigator CRM system identified by Plaintiff, none of which have been previously produced. Endo reports that it expects to produce compliance documents by September 27, 2021, and that it is “working to create reports

1 of [the IMS/Navigator CRM] data for production this month.” Endo has provided no explanation  
2 of why these efforts were not undertaken months or years ago.

3 **b. SpeakerNet Data File**

4 Plaintiff initially raised inconsistencies in Endo’s SpeakerNet Data File on *May 28, 2021*.  
5 Despite this Court’s order that all such data be produced by September 13, 2021, Endo claims that  
6 it needs until September 27, 2021, four months after Plaintiff identified the missing data, to  
7 search “two additional sources that may contain SpeakerNet data” and to “complete its production  
8 of additional files.” However, Endo has provided no explanation of why these efforts were not  
9 previously undertaken. Nor has Endo explained why it took *over three months* (until September  
10 3, 2021) to provide Plaintiff with additional SpeakerNet data from the *very same report* as Endo’s  
11 original production of SpeakerNet Data in April of 2020, or why information regarding events  
12 costs, fees, “honoraria”, and travel expenses, were excluded from its original production of data.

13 **c. Health Care Professional (“HPC”) Payment and Clinical Trial Data**

14 The Court ordered that Endo investigate these potential sources of data identified by  
15 Plaintiff by September 13, 2021. Endo did not comply. Instead, Endo stated that it has just now  
16 “identified certain individuals (and one source)” who may have been responsible for payments  
17 relating to clinical trials and “research activities” in its September 7, 2021, written statement  
18 detailing the sources searched for payments. Endo provides no explanation for why this basic  
19 investigation was not previously undertaken in preparing its initial response to Plaintiff’s  
20 discovery requests, but now claims it will not be able to produce responsive information until  
21 September 27, 2021.

22 As for Par, counsel has now confirmed that third-party vendor Porzio Life Sciences has a  
23 legacy instance of the Porzio database that may contain the pre-2015 payments to HCPs Plaintiff  
24 has been seeking. This database has been in Endo’s possession or control, and yet Endo said that  
25 it has only now inquired as to whether Porzio retained any legacy database and begun reviewing  
26 it. Par says it “expects” to be able to produce responsive materials by September 27, 2021. Par  
27 provides no explanation of why this search was not done previously.  
28

**d. Pharmacy, Contact, Location, Organization/Client Data Notes (previously referred to as “Pharmacy Notes”)**

Endo produced these notes relating to sales activities directed to pharmacies for 2002-2007 and 2008-2012 on September 3, 2021, and September 10, 2021, respectively. However, in addition to the pharmacy calls initially described, such productions also included hundreds of thousands of lines of free-style notes on healthcare providers and/or pharmacies in additional datasheets titled “contact,” “location” “client” (2002-2006) and “organization” (2008-2012) which had not previously been disclosed. Plaintiff is also still waiting for post 2012 data.

**e. Representations by Publication**

Endo did amend its response to Interrogatory Nos. 3 and 4 by September 13, 2021, after this Court ordered it to do so at Plaintiff’s request. But the response is still incomplete on its face. After months of telling Plaintiff that it is not aware of any central location for publication information, Endo has suddenly identified a non-custodial source provided by a third-party vendor, PubsHub, which “includes information regarding journal abstracts, posters, presentations, and articles Endo sponsored” in connection with its sale of opioids. On September 15, 2021, Endo represented it “will work to produce any responsive information by September 27, 2021.” Plaintiff served the interrogatories on *December 3, 2020*.<sup>8</sup>

**f. Additional Non-Custodial Sources**

On September 15, 2021, Endo also advised that it is “continuing to investigate whether there are other potentially responsive non-custodial sources” and promised to update Plaintiff at some unidentified date. Obviously, all such sources should have been identified months, if not years, ago. Plaintiff asks the Court to order a date by which the Endo Defendants will verify under oath that *all* potential sources have been searched.

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<sup>8</sup> While Endo argues that “it was only on August 5, 2021, that Plaintiff clarified” that these interrogatories referred to “published statements that Endo disseminated or ‘caused to be disseminated,’ such as by seeking out or working with authors, approving draft articles, assisting with submission, editing, or publication of articles,” Plaintiff has been seeking publication information for months, and this (and all of the other categories of information apparently in the PubHub file) are plainly responsive to the interrogatories served.

1 **g. Call Messages and Materials Dropped**

2 Although Endo represented in the parties' August 23, 2021, Joint Status Update that it had  
3 conducted (and completed) an "exhaustive investigation" to locate any and all materials dropped  
4 data, Endo has recently disclosed that additional materials dropped data may also exist in its  
5 Navigator CRM system, and accordingly, its search remains ongoing. Endo has not provided *any*  
6 *explanation* as to why the Navigator CRM system was not previously searched *nor requested*  
7 *any extension of time* to produce such information. Further, Plaintiff has asked Endo to  
8 determine whether the previously identified SIF2007 Backup also includes information regarding  
9 materials dropped for the time period of 2002-2007, but has not received any response.

10 In addition, although Endo's Motion for Extension made no mention of Endo's ongoing  
11 production of call messages, correspondence from Endo's new counsel, Skadden, explains that  
12 Endo has now located *additional call messages and reaction data from 2016* in its Navigator  
13 CRM system. Endo has not provided any explanation for why these call messages were not  
14 previously searched for and produced.

15 Indeed, Endo was initially ordered to complete its investigation into call messages and  
16 materials dropped and "[t]o the extent that Endo identifies additional responsive data, *that data*  
17 *shall be produced* ... by *May 31, 2021*." Doc. 561 (emphasis in original). However, as it did  
18 here, Endo *ignored* this Court's deadline to produce responsive data and instead filed a "Status  
19 Report" on May 28, 2021, stating that its investigation into the missing data was "ongoing." Doc.  
20 566. Subsequently, on June 16, 2021, this Court issued an order providing in relevant part that:  
21 "Endo shall submit a status update to the Court *by June 30, 2021* regarding the status of its  
22 investigation into data and other information potentially responsive to Plaintiff's Interrogatory  
23 Nos. 1-4 and the expected date of completion. Doc. 578. Following Endo's Status Report of June  
24 30, 2021, this Court ordered that Endo "shall complete its investigation of the Commercial Data  
25 Warehouse and the StayinFront CRM database and database backups and *produce any*  
26  
27  
28

1 ***responsive materials discovered therein by July 21, 2021.***” Two months later, Endo’s  
 2 investigation and production of call message data and materials dropped is ***still*** incomplete.<sup>9</sup>

3 Further, Plaintiff notes that Endo’s production of such call messages (in addition to its  
 4 previous productions of 2012-2015 call messages) indicates that Endo’s initial “explanation” for  
 5 ***why*** the data has not been previously produced and ***why*** its investigation into the existence and  
 6 collection of call messages was so time consuming was inaccurate. Specifically, Endo initially  
 7 dismissed Plaintiff’s evidence that Endo routinely tracked, not only key messages entered by its  
 8 sales representatives, but also HCP reactions, stating that the document Plaintiff cited  
 9 demonstrated only that such information was entered into a “TRex” CRM system used in 2008  
 10 that “may no longer be accessible.” In response, Plaintiff provided Endo with further  
 11 documentation demonstrating that the TRex structured call note system was in use until ***the end***  
 12 ***of 2011***, and that Endo ***continued*** to utilize a structured call note system even when it switched  
 13 CRM system to Atlas (Veeva) in 2012.

14 Despite this, in the parties’ May 7, 2021, Joint Discovery Letter Brief, Endo represented  
 15 that it had “***conducted a diligent investigation of potentially responsive data at the time***  
 16 ***discovery began in the MDL***, identifying what it then understood to be reasonably available  
 17 sources related to call notes and promotional materials ‘dropped’ with healthcare providers.”  
 18 Doc. 551 at 8. Endo defended its failure to produce the relevant and responsive call notes by  
 19 stating that, “Plaintiff refers to certain fields from the TRex ***call note system used in 2011***, but  
 20 Endo’s collection of call note data occurred in 2017, ***when those fields from 2011 and prior***  
 21 ***years were no longer readily accessible.***” *Id.* (emphasis added). Given that it now appears that  
 22

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23 <sup>9</sup> In addition to prejudicing Plaintiff in this action, Endo’s ongoing refusal to abide by this Court’s  
 24 discovery orders regarding production of call messages and materials dropped data has proved to  
 25 be prejudicial to plaintiffs in ***related*** litigation. Shortly after Endo finally produced its call  
 26 messages and notes, a trial court in the State of New York (where trial was already under way)  
 27 granted the State of New York’s Motion for an Order to Show Cause against Endo. The motion  
 28 was primarily based upon and supported by Endo’s belated production of smoking gun call  
 messages and call notes. The plaintiffs in *People of the State of California v. Purdue Pharma, et al.*,  
*Orange County Superior Court*, Case No. CGC-13-534108, where trial began on April 19,  
 2019, and concluded on July 26, 2021, were even more severely prejudiced. Accordingly, Santa  
 Clara County, Orange County, Los Angeles County, and the City of Oakland brought a Motion  
 for Sanctions (based in large part on Endo’s failure to produce call messages and call notes) on  
 September 10, 2021.

1 call messages continued to be entered through 2016, only *one year* before data collection, this  
 2 statement appears to be false. Endo could have determined the extent to which its sales  
 3 representatives tracked their call messages and physician responses across CRM systems by, *inter*  
 4 *alia*, asking its current or former employees. For example, Ernesto Sayo, an Endo Specialty Sales  
 5 Representative in the Bay Area (and a custodian in this case) from 2008 through the present, may  
 6 have been able to provide such information long ago.

#### 7 **h. Plaintiff's Challenge to Privilege Designations**

8 Plaintiff has challenged several of Endo's privilege designations. *First*, on August 13,  
 9 2021, Plaintiff challenged Endo's efforts to claw back 17 documents on privilege grounds, and  
 10 Endo has agreed to withdraw privilege designations for nearly all of these documents *Second*, on  
 11 September 11, 2021, Plaintiff challenged 15 documents from the custodial file of Eric Vandal  
 12 listed on Endo's privilege log. At 8:39 pm on September 20, 2021, Endo responded and agreed to  
 13 withdraw or modify the majority of these entries. *Third*, Plaintiff challenged the privilege  
 14 designation of 52 documents from the custodial files of Bobbie Sue Brown, and Endo has de-  
 15 designate in whole or in part 27 of these documents. Plaintiff is evaluating the adequacy of the  
 16 responses.

#### 17 **5. Potential Remedies**

18 Plaintiff is still evaluating what remedies may be appropriate for the misconduct and  
 19 delays described herein and in earlier reports. At minimum, Plaintiff reserves the right to seek an  
 20 extension on its expert report deadline and reserves the right to seek evidentiary and monetary  
 21 sanctions as may be necessary and appropriate.

### 22 **DEFENDANTS' STATEMENT**

#### 23 **I. Status of Party Discovery**

##### 24 **A. Status of Party Discovery**

##### 25 **1. Defendants' Discovery Requests**

26 Defendants have identified numerous concerns with Plaintiff's document productions and  
 27 privilege logs, which have impacted depositions and the schedule, and make it increasingly likely  
 28 that Defendants will be unable to complete necessary fact depositions or work through deficiencies

1 in Plaintiff's productions before the November 12 fact discovery deadline. These concerns are set  
2 forth more fully below.

- 3 a. Late Production of Documents. Since the substantial completion deadline of June  
4 21, 2021, Plaintiff has produced over **89,000** documents—more than 26,000 in the  
5 past five days. It is unclear how many more documents remain to be produced or  
6 when Plaintiff will complete its productions.

7 Plaintiff tries to explain its discovery failures by carving out documents set  
8 aside for privilege review. But if setting aside those documents meant that  
9 Plaintiff would not meet the Court's substantial completion deadline, Plaintiff  
10 should have said so, instead of sandbagging Defendants with tens of thousands of  
11 documents, three months late. Plaintiff also argues that Defendants' complaints  
12 about Plaintiff's discovery failures come too late. But Plaintiff did not disclose  
13 until August 27 that it was adding two new custodians, discussed below; and  
14 Plaintiff only disclosed as depositions were supposed to get going in earnest that  
15 their deponents' custodial files were far from complete. Defendants raised these  
16 issues with Plaintiff as soon as they became apparent.

- 17 b. Newly Added Custodians. Months after the substantial completion deadline,  
18 Plaintiff has identified two additional custodians. On August 27, 2021, Plaintiff  
19 identified Kathleen Chung, an Opioid Safety Subject Matter Expert with San  
20 Francisco's Department of Public Health, in the People's Fourth Supplemental  
21 Responses and Objections to Distributor Defendants' First Set of Interrogatories.  
22 And on August 30, 2021, Plaintiff produced SF-Opioids\_VOL00047, stating that it  
23 included 258 "documents from the custodial production of Dr. Claire Horton and  
24 Dr. Kathleen Chung." This was the first time Plaintiff alluded to the additions of  
25 Drs. Horton<sup>10</sup> and Chung as custodians.

26 On September 9, 2021, in Plaintiff's Fifth Supplemental Response to the  
27 same interrogatories, and the accompanying email, Plaintiff confirmed Dr. Claire  
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<sup>10</sup> Dr. Horton is San Francisco Department of Public Health's Chief Medical Officer.

Horton's custodial status for the first time. Plaintiff subsequently informed Defendants on September 10, 2021 that it would be producing at least 5,700 documents from Dr. Horton's custodial files the following week. Plaintiff has not explained why these two custodians were not added sooner. This is particularly troubling as Defendants identified Dr. Horton as a necessary additional custodian, and first requested Dr. Horton as a custodian, on February 2, 2021. Plaintiff refused, and failed to produce any documents from her custodial file until seven months later, long after the substantial completion deadline. Plaintiff has also not specified how many documents for these custodians it will produce or when it will produce them.

Plaintiff was not substantially complete with its custodial productions by June 21. It produced zero documents for Dr. Horton and Dr. Chung by that date, and Plaintiff's late disclosure and production of these custodians has nothing to do with privilege review. To make matters worse, Plaintiff represented that it will not produce all of Dr. Horton and Dr. Chung's documents, and that Defendants will have to proceed via third-party subpoena to UCSF to obtain some of their responsive documents. In short, Plaintiff cherry-picked custodians, produced them months late, and now Defendants are behind the eight ball in terms of getting their documents in time to depose them before the November 12 fact discovery deadline.

- c. Upcoming Depositions. Multiple depositions of Plaintiff witnesses have been postponed at the last minute due to Plaintiff's failure to produce documents timely. The deposition of Dr. Luke Rodda, the Chief Forensic Toxicologist and Forensic Laboratory Director at San Francisco's Office of the Chief Medical Examiner, was scheduled for September 14, 2021, but was postponed after Plaintiff informed Endo's counsel on September 13, 2021 of its intention (as noted above) to belatedly produce an additional 4,900 documents associated with Dr. Rodda by September 17, 2021. The deposition of Dr. Amy Hart, a former Chief Medical

Examiner at San Francisco’s Office of the Chief Medical Examiner, was similarly postponed due to Plaintiff’s inability to confirm that documents associated with her had been produced in full. Defendants were also forced to postpone the deposition of Brian Philpott *twice*. Mr. Philpott’s original deposition was scheduled for September 9, 2021, but was rescheduled to September 15, 2021 due to a late production of Mr. Philpott’s custodial documents. Five days before Mr. Philpott’s rescheduled deposition, Plaintiff confirmed it would be producing more than 400 additional custodial documents for Mr. Philpott the week of his scheduled deposition. Defendants are now forced to review tens of thousands of late-produced documents, including for depositions of custodians it was otherwise prepared to proceed with, and custodians who have already been deposed (as discussed below), all while preparing for many other depositions, in the next two-and-a-half months.

d. Past Depositions. Defendants deposed Dr. Michelle Fouts and Dr. Michelle Geier in July 2021. On August 4, Defendants asked a number of questions coming out of Dr. Geier’s deposition. Plaintiff refused to answer them, instead insisting that the number of questions was unreasonable. Plaintiff has subsequently answered some of Defendants’ questions, though many issues remain:

i. Plaintiff has, as of this date, not searched for or produced all of its “standard work” training documents relating to dispensing, in violation of this Court’s April order. April Hearing Tr. at 45-46 (instructing Plaintiff to find and produce policy materials relating to the dispensing and prescribing of prescription opioids “[b]y the end of April.”).

ii. Dr. Geier testified that prescribing buprenorphine and chronic opioids was, but no longer is, a red flag. Plaintiff refused to provide, or identify by bates number, if it already did provide, documents identifying what Plaintiff taught its pharmacists is a dispensing red flag and how those alleged red flags changed over time. These documents are also encompassed by this

1 Court's April order instructing Plaintiff to produce policy materials relating  
2 to dispensing.

3 iii. Plaintiff has not produced documentation from its pharmacies of when its  
4 patients are turned away from non-City pharmacies. Dr. Geier testified that  
5 City pharmacies document these instances "[t]o the best of [their]  
6 knowledge," Geier Dep. Tr. at 235, and these documents are responsive to  
7 Walgreen's RFP No. 5 (First Set of RFPs) (seeking documents reflecting or  
8 relating to complaints, investigations, problems, concerns, or harm  
9 resulting from the refusal or dispense Prescription Opioids).

10 iv. Plaintiff refused to search for or produce documents regarding its patients'  
11 abuse or diversion of buprenorphine and other opioids.

12 v. Dr. Geier testified that she cannot validate whether CBHS pharmacists  
13 document resolution of red flags (and Plaintiff objected to the questioning  
14 to the extent such documentation is outside Dr. Geier's personal scope of  
15 knowledge). Defendants asked if there is anyone specifically responsible  
16 for validating red flag resolution and documentation. Plaintiff refused to  
17 answer.

18 vi. Plaintiff refused to produce all of its inspection reports from City  
19 pharmacies, despite Walgreens' production of all inspection reports it  
20 could locate at 12 of its pharmacies. Walgreens sought these documents in  
21 its Third Set of RFPs to Plaintiff (RFP 4, requesting "[a]ll audits, reviews,  
22 or other assessments of compliance with state and federal law . . . regarding  
23 the dispensing of controlled substances for each [Plaintiff] pharmacy.").

24 e. Temporal Deficiencies in Plaintiff's Current Production. Nearly two-thirds of  
25 Plaintiff's production dates from 2016 to 2021. Only 8% of documents are dated  
26 prior to 2013, with only 4% dated prior to 2010. Defendants have been able to  
27 identify only 297 documents from Plaintiff's production that are dated from 1980  
28 to 2000. This temporal deficiency is evident with respect to specific custodians.

1 For example, Dr. Amy Hart has worked for San Francisco's Office of the Chief  
2 Medical Examiner since 2001, and has held numerous roles within the Office  
3 including Chief Medical Examiner; none of her produced custodial documents  
4 appear to originate prior to 2013.

5 f. Missing Investigation Files Associated with CDW Incident Reports. Following the  
6 Court's April 15, 2021 Order for Plaintiff to produce Crime Data Warehouse  
7 ("CDW") narratives (Doc. 530), Plaintiff made multiple productions of CDW  
8 documents, which Plaintiff represented were complete on June 10. On June 17,  
9 following review of those productions, Defendants followed up to narrow their  
10 prior requests for police department investigation files in response to Defendants'  
11 discovery requests to the files associated with 36 particularly relevant incidents, a  
12 small percentage of the CDW incidents listed in the CDW for which Plaintiff  
13 produced the CDW incident reports. Plaintiff has informed Defendants that it has  
14 located only three of the 36 investigation files requested by Defendants, and could  
15 only provide vague and general answers during an initial phone call in response to  
16 some of the questions Defendants asked regarding what efforts were made to  
17 search for the other files (and has subsequently disputed what Defendants  
18 understood to be the answers it did provide). To put the parties on the same page,  
19 Defendants have repeatedly asked Plaintiff to explain in writing what specific  
20 efforts were made to locate each of the other files and, for incidents where no file  
21 was created by the San Francisco Police Department, to explain why. To date,  
22 Plaintiff has "addressed th[is] request" by generally *refusing* to provide the written  
23 answers requested.

24 g. Needed Information Regarding Databases for Incident Reports. Defendants have  
25 also inquired about equivalent databases for incident reports from the San  
26 Francisco Sheriff's Department and additional information regarding San  
27 Francisco Emergency Medical Services ("EMS") incidents. Plaintiff has  
28 represented that there is no such database for the Sheriff's Department, but as of

the date of this status report has not responded to Defendants' questions about EMS incidents.

h. Missing Privilege Log Entries. Plaintiff has produced approximately 32,000 documents that appear to be fully redacted, one-page documents only containing the word "privileged." The *Agreed Order Governing Privilege* states that "[t]he Designating Party shall produce a privilege log within forty-five (45) days of a production that substantially completes production for a particular custodian or non-custodial source." *Agreed Order Governing Privilege, In Re: National Prescription Opiate Litigation*, Case No. 1:17-md-02804-DAP, ECF No. 2882, at 1 (N.D. Ohio October 29, 2019). Plaintiff's six custodial privilege logs contain entries for only 11,699 documents. As such, Plaintiff appears not to have provided corresponding privilege log entries for over 20,000 documents, or more than 63% of Plaintiff's fully redacted documents, three months after Plaintiff confirmed substantial completion of its custodial production. Plaintiff represented on September 20, 2021 that its recent productions, in which it produced materials previously withheld as privileged, "should" address these missing log entries. Defendants are evaluating the productions.<sup>11</sup>

i. Inadequate Privilege Log Entries. Plaintiff's privilege log entries often lack key information to allow Defendants to properly evaluate Plaintiff's privilege designations. Across Plaintiff's six custodial privilege logs, Plaintiff provided approximately 930 entries without any privilege description. Many of these entries also do not contain key information, such as recipient information in the "PrivAuthor," "Email To," "Email CC," or "email subject" descriptions. Volume 1 alone has 292 entries without any privilege descriptions, and 75 entries for which

<sup>11</sup> Plaintiff confirmed substantial completion of its custodial production on June 15, 2021, stating that "consistent with the representations made in Plaintiff's declaration accompanying the parties' stipulation, Plaintiff completed the substantial production of its custodial documents on June 4, 2021." See Joint Status Update, *City and County of San Francisco, et al. v. Purdue Pharma, L.P., et al.*, Case No. 3:18-cv-07591-CRB, ECF No. 571, at 4 (N.D. Cal. June 15, 2021).

attorney-client privilege was asserted that do not include an identifiable attorney. The parties are meeting and conferring about these issues.

- j. Substantive Challenges to Plaintiff's Privilege Logs. Defendants submitted hundreds of privilege challenges to Plaintiff on August 11, 2021, and hundreds more on September 9, 2021, noting what appear to be systemic overbroad and unsubstantiated privilege claims. On September 20, Plaintiff responded to Defendants' first round of challenges.
- k. Plaintiff's Amended Responses and Objections to Walgreens' Third Set of Interrogatories: This Court ordered that Plaintiff respond to these interrogatories and identify prescriptions Walgreens filled that Plaintiff contends were illegitimate or diverted. May Hearing Tr. at 18. Plaintiff's Amended Responses cite 800 documents, only five of which mention Walgreens in *any* way. None of the documents in Plaintiff's Amended Response identify prescriptions Walgreens filled that Plaintiff contends were illegitimate or diverted. Plaintiff has refused to confirm its responses to the interrogatories are complete, refused to identify any basis for its assertion that *any* of the prescription opioids in the hundreds of documents are "likely to have come from Walgreens," and refused to inform Walgreens which prescriptions at issue in those documents it contends came from Walgreens. Plaintiff failed to substantively respond to either of the two interrogatories, or to tell Walgreens that it does not intend to identify prescriptions filled by Walgreens that were illegitimate or diverted, in violation of the Court's order.

It is difficult for Defendants to say how much additional time for fact discovery will be necessary due to Plaintiff's significant late productions, and because Plaintiff has not answered Defendants' questions regarding how many documents are outstanding, for which custodians, or when the remaining documents will be produced. Defendants believe an extension of the schedule will be necessary, however, of at least two months. Defendants are evaluating other necessary relief, including a motion to preclude Plaintiff from relying on late-produced documents.

## 2. Plaintiff's Discovery Requests

Defendants have produced millions of documents in the MDL, which are deemed produced in this case. In addition, Defendants have made additional productions specific to this case.

In advance of the last status conference, **Walgreens** completed its custodial productions, resulting in a production of approximately 50,000 custodial documents, on top of the more than 380,000 documents Walgreens has produced in the MDL. On May 17, Walgreens completed its production of hard copy refusals to fill and Target Drug Good Faith Dispensing checklists resulting in a total hard copy production of over 35,000 documents and over 135,000 pages.<sup>12</sup>

On August 13 (three days early), Walgreens completed its production of electronic due diligence records resulting in a production of over 31 million records. On September 1, Walgreens completed its production of hard copy prescriptions.

On September 16, Walgreens completed its production of documents as ordered in ECF 635. The parties separately negotiated an additional Walgreens production of RXM mailboxes, which will be complete on September 24.

Plaintiff and Walgreens also met and conferred regarding the searchability of Walgreens' internal complaint database. Walgreens' two technical experts (one outside consultant and one Walgreens' employee with first-hand knowledge of the system), explained how and why the internal complaint database is *not* searchable beyond front-end, burdensome searches.

Based on the technical meet and confer, it is Walgreens' understanding that Plaintiff is not moving to compel a categorical production from the APIS database. Instead, Plaintiff has asked follow-up questions about running targeted searches both inside and outside of the APIS database. Walgreens has conducted additional searches in response to those requests, and aims to produce any additional responsive documents by September 24.

Plaintiff remains unsatisfied, however, making four additional requests, each of which Walgreens is either already responding to, or will respond to shortly. Walgreens addresses each in turn:

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<sup>12</sup> Walgreens has also updated its Interrogatory responses a couple times at Plaintiff's request.

1           1.       *Documents addressing “‘institutional’ issues [that] were being further reviewed*  
 2 *by [Employee Relations] and the company.”*

3           Plaintiff has mischaracterized this document. It does not refer to any additional  
 4 documents. Instead, it says the pharmacist “was advised that his concerns around ‘institutional’  
 5 issues were being further reviewed by ER and the company.” Indeed, the company investigated  
 6 the issues, and determined the complaint was unsubstantiated. Walgreens has already conducted  
 7 a reasonable, diligent search and produced the documents that it could find. If Plaintiff has  
 8 additional specific requests, Walgreens remains willing to discuss the issues.

9           2.       *Documents reflecting “training” conducted in response to whistleblower*  
 10 *complaint.*

11           Here, an investigator wrote that, as a result of an internal complaint, Walgreens  
 12 conducted additional training at that pharmacist’s location. Walgreens has already conducted a  
 13 reasonable, diligent search for documents and produced all that it could find. If Plaintiff has  
 14 specific additional requests, Walgreens remains willing to discuss the issues.

15           3.        *“[R]espon[se] to [whistleblower] in writing to address his concerns.”*

16           Walgreens agreed to search for the email Plaintiff references here. Walgreens  
 17 anticipates producing what it finds on September 24.

18           4.       *Case summary cataloged under different case number.*

19           Plaintiff initially provided the case number 1195618 to Walgreens and asked Walgreens to  
 20 find and produce the complaint and documents at issue. Walgreens has already produced the APIS  
 21 complaint file, maintained under APIS complaint number 8239138. Walgreens subsequently  
 22 identified a small amount of additional information related to the initial complaint number, and will  
 23 produce that information on Friday, September 24.

24           Walgreens has also already produced a wide variety of other documents about the internal  
 25 complaint at issue, including all of the witness statements from the investigation and other  
 26 documents relating to the complaining pharmacist’s board actions, despite the limited relevance of  
 27 an employee complaint from outside this jurisdiction. Walgreens has also produced information  
 28

1 related to all complaints, including close cases, related to diversion in San Francisco that Walgreens  
2 could identify.

3 Plaintiff also now complains about the Appriss database, and incorrectly asserts that  
4 Walgreens “*decommissioned*” its Appriss database as a result of the opioid litigation. This is false.  
5 Walgreens retains the same access to the Appriss database that it always had. As explained in detail  
6 during the meet and confer with Walgreens’ subject matter experts on this topic, searching that  
7 database is unduly burdensome and not proportional to the needs of the case, particularly given that  
8 Walgreens has already produced documents from custodial files that are duplicated in the database.  
9 Plaintiff has now served an extraordinarily broad third-party subpoena on Appriss, and therefore  
10 does not appear to be seeking this information from Walgreens any longer.

11 Plaintiff also asserts that Walgreens misled Plaintiff about the responsibilities of an  
12 investigator custodian. This is false. Walgreens’ counsel informed Plaintiff in June of the  
13 timeframe of that custodian’s California-specific role. Indeed, Plaintiff knew that custodian’s  
14 responsibilities as to California were limited when counsel complained to this Court in an August  
15 13 filing, *attaching that custodian’s LinkedIn resume*. Dkt. 623, Ex. 28. Plaintiff nevertheless  
16 chose to proceed with that deposition (surprising Walgreens, considering Plaintiff’s complaints  
17 about his irrelevance to the case), and now pretends it is surprised by that custodian’s  
18 responsibilities.

19 The **Endo** and **Par** Defendants have been working as diligently and quickly as possible to  
20 comply with the Court’s Order Following August 30, 2021 Discovery Conference (“Order”). In  
21 particular, and as set forth in its motion for leave (Doc. 650), Endo timely produced the “Pharmacy  
22 Notes” discussed at the August 30, 2021 status conference, as well as additional SpeakerNet Data  
23 identified in the parties’ August 23, 2021 Joint Status Report (Doc. 632 at 6, 13) on September 3,  
24 2021. Following the parties’ September 7, 2021 meet and confer, Endo also produced additional  
25 notes (defined in the Order as “Pharmacy Notes”) from the legacy “SIF 2007 Backup” on  
26 September 10, 2021.<sup>13</sup> Endo also provided additional information and answers to Plaintiff’s

27  
28 <sup>13</sup> Endo included in the meet and confer Diana Fasching, a Managing Director from Redgrave  
LLP, who is part of the team investigating “Pharmacy Notes,” and per the Court’s statements at  
the August 30, 2021 status conference, is familiar with them.

1 questions regarding Endo’s investigation of other identified data sources containing customer  
 2 relationship management information that it was investigating to assess whether “Pharmacy Notes”  
 3 can be located in such sources. Endo also completed its investigation into whether any additional  
 4 responsive materials exist for medical science liaison interactions and is close to finishing its  
 5 investigation with regard to materials dropped data. *See* Doc. 650 and 650-1. Endo also timely  
 6 provided plaintiff with amended responses to Interrogatory Nos. 3-4 on September 13, 2021, which  
 7 relate to “representations by publication.” Finally, on September 7, 2021, as required by the Order,  
 8 the Endo and Par Defendants provided a “written statement” to CCSF regarding its investigation  
 9 and planned approach for producing responsive information related to payments to healthcare  
 10 professionals (“HCP payments”) and pre-2013 clinical trial payments.

11 Despite best efforts, however, the Endo and Par Defendants were not able to meet the  
 12 September 13, 2021 deadline with respect to some of the other discovery items addressed in the  
 13 Court’s Order. Consequently, after meeting and conferring with Plaintiff, on September 10, 2021,  
 14 the Endo and Par Defendants submitted a Motion for Extension of Time (“Motion”) to the Court  
 15 seeking a two-week extension of certain of the discovery obligations initially imposed in the Order.  
 16 Doc. 650. The Court has since granted that Motion, specifically extending the deadline for (1)  
 17 producing Compliance documents; (2) completing an investigation into SpeakerNet Data files; and  
 18 (3) finishing an investigation into potential sources of HCP payments, until September 27, 2021.  
 19 Doc. 655.

20 In its Status Report, Plaintiff acknowledges the progress with respect to each of items at  
 21 issue in the Court’s August 30 Order, but levies varied criticisms. Those are briefly addressed:

22 **a. Compliance Documents and Navigator Data**

23 Plaintiff claims that “[o]n September 10, 2021, Endo represented it has identified some 90  
 24 boxes of hard copy compliance documents not previously produced or reviewed.” This is  
 25 incorrect and misstates the record. In the Motion, Endo stated that it “is also reviewing  
 26 documents from both hard-copy and identified electronic Compliance sources with *broad*  
 27 *responsiveness criteria* in an effort to address ongoing and anticipated discovery requests.” Doc.  
 28

1 650 at 4 (emphasis added). Moreover, paragraph 8 of the Declaration of Karen O. Hourigan  
 2 states: “Endo has identified approximately 90 boxes that may contain additional hard-copy  
 3 Compliance materials, *some of which were assessed in connection with Endo’s previous*  
 4 *productions.*” Doc. 650-1 at ¶ 8 (emphasis added).

5 As for additional Call Data (as previously defined in court submissions as sales calls made  
 6 by Endo personnel on HCPs) to be produced from Endo’s Navigator system, counsel for Endo  
 7 stated that this Call Data is from one year: 2016. As the Court is aware, Endo has spent hundreds  
 8 of hours in its efforts to locate Call Data that was the subject of the parties’ May 7, 2021 joint  
 9 discovery letter. Doc. 551. Endo has made multiple productions of Call Data and other  
 10 information that was originally entered into its CRM systems. Endo also has had multiple meet  
 11 and confer session and status update meetings with Plaintiff where Plaintiff has asked and Endo  
 12 has provided answers regarding its prior efforts. Indeed, the record regarding Endo’s efforts over  
 13 the past several months is reflected in the docket for this case. As Endo has only recently located  
 14 additional fields related to Call Data (i.e., “message” and “reaction” fields), Endo is now working  
 15 to make this production. Endo also will be producing similar additional fields that it located in  
 16 the Navigator data source for the period of time between February and December 2015; however,  
 17 Endo has located only the “message” field for the 2015 time period. Plaintiff’s statement that  
 18 “none of which have been previously produced” may be accurate when limited to “message” and  
 19 “reaction” fields. However, Endo produced Call Data from 2015 and 2016 on July 6, 2018 in this  
 20 matter that was extracted from its Commercial Data Warehouse. Endo’s future production of Call  
 21 Data that has been located in the Navigator data store will include the additional fields that  
 22 Plaintiff has requested to the extent Endo has been able to locate them.

23 **b. SpeakerNet Data File**

24 Contrary to Plaintiff’s assertion that “Endo has provided no explanation” of its efforts and  
 25 investigation regarding SpeakerNet Data, Endo informed Plaintiff no later than August 20, 2021  
 26 that it expected to make additional productions of SpeakerNet Data as a result of its investigation  
 27 following Plaintiff’s questions regarding prior productions. Also contrary to Plaintiff’s  
 28

1 contentions, the September 15, 2021 letter provides substantial information regarding speaker  
2 program data.

3 **c. Health Care Professional (“HCP”) and Clinical Trial Payments**

4 Plaintiff asserts that Endo did not comply with the Court’s order, which it characterizes as  
5 requiring that “Endo investigate these potential sources of data identified by Plaintiff by  
6 September 13, 2021.” At the same time, however, Plaintiff acknowledges that in its September 7,  
7 2021 letter to Plaintiff, Endo reported having identified 11 individuals and 1 source whose  
8 responsibilities may have included tracking payments in relation to Endo clinical trials and  
9 research activities. These same sources were referenced in Endo’s September 10, 2021 Motion.  
10 (Further, the Court has since extended until September 27, 2021 the date by which to finish this  
11 investigation.) Plaintiff continues that “Endo provides no explanation for why this basic  
12 investigation was not previously undertaken....” Plaintiff did not inquire specifically about these  
13 sources until July 29, 2021.

14 Plaintiff also faults Par for having only now “confirmed that third-party vendor  
15 Porzio Life Sciences has a legacy instance of the Porzio database that may contain the pre-2015  
16 payments to HCPs...,” and that “[t]his database has been in Endo’s possession or control....”  
17 Early in the litigation, Endo produced data from a Porzio database that included certain data  
18 relating to payment to HCPs. As part of Endo and Par’s investigation regarding HCP payment  
19 data in response to Plaintiff’s inquiries beginning on July 29, 2021, Par was able to confirm that  
20 third-party vendor Porzio retained possession of a legacy instance of a Porzio database that may  
21 contain information related to payments made by Par to HCPs dating to the period before 2015.  
22 The data was obtained from Porzio recently, and Par is now working to produce responsive data  
23 by September 27.

24 **d. Pharmacy, Contact, Location, Organization/Client Data Notes**  
25 **(previously referred to as “Pharmacy Notes”)**

26 Plaintiff raised “Pharmacy Notes” with the Court at the August 30, 2021 status  
27 conference. Endo has made two productions of this information, which includes notes fields  
28 relating to pharmacy, contact, location, and organization in compliance with the Court’s August

30, 2021 Order (Doc. No. 644). Should Endo identify that similar information exists in other data sources it has recently located related to Endo's CRM systems, including for the period post-2012, Endo will produce that data. In connection with Endo's investigation of the Navigator data source, Endo will produce additional extracts containing similar information as what it produced from the SIF 2008-2012 and SIF 2007 data sources and is endeavoring to make that production by September 27, 2021 barring any unforeseen technical issues that may arise.

In meet and confer discussions, Endo has disclosed to Plaintiff why this information had not previously been included in Endo's productionso of Call Data (i.e., Endo does not consider this information to fall within the definition of Call Data and different SQL search queries are needed to locate and join this type of information because it often is stored in different tables than Call Data in the numerous data sources from which Endo has located and extracted this information and produced it to Plaintiff). Endo also notes that it disclosed to Plaintiff what it produced in relation to Plaintiff's Interrogatory No. 1 on February 10, 2021 in its objections and responses to Plaintiff's interrogatories, and "Pharmacy Notes" were not included as information sought by Plaintiff in the parties' May 7, 2021 joint discovery letter (Doc. 551).

**e. Representations by Publication**

Endo timely supplemented its responses to Interrogatory Nos. 3-4. Nonetheless, Plaintiff faults Endo for only now having "identified a non-custodial source provided by a third-party vendor, PubsHub, which 'includes information regarding journal abstracts, posters, presentations, and articles Endo sponsored' in connection with its sales of opioids." It was only on August 5, 2021 that Plaintiff clarified that it interpreted these interrogatories to refer not only to journal advertisements, but also any published statements that Endo disseminated or "caused to be disseminated," such as by seeking out or working with authors, approving draft articles, assisting with submission, editing, or publication of articles.

**f. Additional Non-Custodial Sources**

Plaintiff notes that in its September 15, 2021 letter, Endo has undertaken to "continu[e] to investigate whether there are other potentially responsive non-custodial sources," but requests that the Court order a date by which the Endo Defendants will verify that "*all* potential sources

1 have been searched.” Considering the amount of effort, time, and money Endo has expended on  
 2 locating additional documents and information (often in response to myriad questions raised by  
 3 Plaintiff), as Endo conducts the assessment described in the September 15 letter, it also may seek  
 4 protection from additional efforts should they be disproportionate and beyond what is permitted  
 5 by Rule 26.

6 **g. Call Message and Materials Dropped**

7 As part of Endo’s continuing commitment to produce relevant data as it may be identified  
 8 in the course of other investigations, Endo is supplementing its production of Call Data that it has  
 9 recently located by obtaining access to a data source related to its Navigator CRM system that  
 10 Endo recently obtained from a third party, IQVIA. Plaintiff protests that this investigation should  
 11 have been conducted earlier, and further asserts that the discovery of these materials calls into  
 12 question Endo’s previous belief and representation that it had conducted a diligent investigation  
 13 of potentially responsive data at the time discovery began in the MDL. Not so, as Endo said in its  
 14 May 7, 2021 submission to the Court (Doc. 551\_\_\_), its understanding was based on what it  
 15 “understood to be reasonably available sources related to call notes and promotional materials  
 16 ‘dropped’ with healthcare providers.” Since May 2021, as this Court has observed, Endo has  
 17 engaged in substantial additional and extraordinary efforts to locate Call Data and materials  
 18 dropped information.<sup>14</sup>

19 Endo consistently has informed this Court and Plaintiff that if it locates additional Call  
 20 Data or materials dropped information as it continuously searches for information requested by  
 21 Plaintiff in this matter or requesting parties in other matters, Endo will inform Plaintiff of any  
 22 discoveries and work rapidly to produce additional relevant and non-cumulative data or

23 \_\_\_\_\_  
 24 <sup>14</sup> Plaintiff asserts that Endo “ignored” this Court’s order to produce Call Data and materials  
 25 dropped data by May 31, 2021. Doc. 561. That is false. The Court’s Order plainly provided that  
 26 “Endo ‘is further investigating whether additional information is available from data sources  
 27 Endo has identified in its response,’” and ordered that “[t]o the extent that Endo identifies  
 28 additional responsive data, that data shall be produced and Endo’s responses to Interrogatories  
 Nos. 1-4 shall be supplemented by May 31, 2021.” *Id.* (emphasis added). That is exactly what  
 Endo did; and at the same time, also updated the Court about its continuing investigation. Endo  
 also complied with the Court’s June 16, 2021 Order by producing responsive Call Data and  
 materials dropped information it located in the Commercial Data Warehouse and the StayinFront  
 CRM database and database backups. Far from “ignoring” the Court’s August 30, 2021 Order,  
 Endo sought and was granted an extension of time.

1 information. Endo did not search data sources associated with its Navigator system because it  
 2 recently obtained the data sources from a third party. Endo's previous searches of its Commercial  
 3 Data Warehouse includes searches of data that was migrated from the Navigator CRM system  
 4 into the Commercial Data Warehouse.

5 Whether the sources from which Endo has now located, searched, and obtained from  
 6 multiple third parties are "readily accessible" is not something the parties have litigated to date.  
 7 However, Endo's efforts to respond to Plaintiff's requests for additional information have been  
 8 extensive, time-consuming, and resource demanding. They also have been communicated  
 9 extensively to Plaintiff and, in many instances, have been disclosed to or discussed with the  
 10 Court. Plaintiff's disparagements suggesting otherwise are inaccurate and unfounded.

11 **h. Plaintiff's Challenge to Privilege Designations**

12 Plaintiff also asserts concern with certain privilege challenges that it has made. On  
 13 September 17, 2021, the Endo and Par Defendants advised Plaintiff that it had evaluated the  
 14 challenges made in Plaintiff's September 7, 2021 letter concerning clawbacks and its September  
 15 10, 2021 letter concerning privilege designations for Eric Vandal custodial materials, and would be  
 16 responding substantively on September 20, 2021. The Endo and Par Defendants have since done  
 17 so, agreeing to produce, redact or modify redactions within 12 of the 15 challenged Vandal  
 18 custodial documents, and to limit or withdraw its clawback with respect to 16 of the 17 challenged  
 19 clawback documents. The Endo and Par Defendants previously responded to challenges made with  
 20 respect to Bobbie Sue Brown custodial materials. All documents that the Endo and Par Defendants  
 21 are de-designating (or reducing redactions) in response to the Vandal and Brown challenges were  
 22 produced on September 20, and in response to the clawback challenge on September 21—in  
 23 advance of any required deadlines and any forthcoming depositions of Endo and Par witnesses.  
 24 With the materials now produced, the Endo and Par Defendants are prepared to meet and confer,  
 25 as necessary, with respect to the few remaining documents.

26 Simultaneously as they have been addressing the above inquiries, in an effort to  
 27 streamline the Endo and Par Defendants' responses to inquiries by plaintiffs nationwide, the Endo  
 28 and Par Defendants' recently retained counsel, Skadden, Arps, Slate, Meagher, & Flom LLP

1 (“Skadden”), along with Redgrave LLP, recently served a letter describing ongoing discovery-  
 2 related efforts. Those efforts include, in order to address questions raised about documents  
 3 previously determined to be non-responsive in an objective and transparent manner, establishing  
 4 repositories on a secure searchable platform by which plaintiffs can view certain documents  
 5 previously coded as non-responsive. Skadden and Redgrave also invited counsel for plaintiffs in  
 6 the various opioid matters across the country to attend a call on Monday, September 20 at noon  
 7 ET where plaintiffs could ask questions that Skadden and Redgrave would address. On Friday,  
 8 September 17, Plaintiff in this matter indicated Plaintiff’s unavailability and requested to schedule  
 9 a separate call on Tuesday the 22<sup>nd</sup> or Wednesday the 23<sup>rd</sup> of this month. As of this time this  
 10 Joint Status Report was filed, this call has not occurred.

11 Finally, Plaintiff again raises discovery proceedings in other matters, and reserves the right  
 12 to seek sanctions. As the Endo and Par Defendants have previously stated, this Court should  
 13 continue to evaluate discovery on the basis of the record in this matter. The Endo and Par  
 14 Defendants respectfully suggest that the parties should remain focused on productively pursuing  
 15 and completing discovery. As noted elsewhere in this report, Plaintiff also has several deficiencies  
 16 in its production, only recently producing many thousands of documents, and in an effort to defend  
 17 that late production, stated in a meet and confer letter on September 19, 2021: “As fact discovery  
 18 in this action does not close until November 12, 2021, defendants have more than adequate time to  
 19 review and process any additional document produced for these and any other individuals.” The  
 20 same applies as well for Plaintiff.

21 **Allergan** has deemed produced in this case documents gathered and produced—without  
 22 geographic limitation—in other opioid cases. It has also made productions specifically for this case,  
 23 most recently on March 24, 2021, which included its privilege log, and on September 20, 2021,  
 24 when it produced five “lookup” files used in responding to Plaintiff’s interrogatories. Allergan’s  
 25 production is substantially complete.

#### 26 **B. Status of Other Third-Party Discovery**

27 The California Department of Justice (“CA DOJ”) produced its CURES data on April 28.  
 28 On May 14, DOJ made a supplemental production of CURES data correcting issues identified by

1 Walgreens. Walgreens recently notified Plaintiff and the CA DOJ that it intends to seek re-  
 2 identification of certain prescribers, including all of Plaintiff's prescribers, contained in the CURES  
 3 data that CA DOJ produced. The parties and CA DOJ met and conferred about this issue on July  
 4 14. CA DOJ indicated it was not willing to identify Plaintiff's prescribers in the CURES data, even  
 5 if notice was properly provided, because of its "other" outstanding objections. The parties asked  
 6 whether CA DOJ would agree to provide an overlay for the CURES data flagging which prescribers  
 7 are employed by Plaintiff, but not actually identifying them, in order to help Walgreens limit the  
 8 number of names it ultimately must seek for identification. CA DOJ indicated that it will do so by  
 9 this week. Walgreens also submitted a much shorter list to DOJ, containing a few dozen additional  
 10 non-plaintiff prescribers, who it intends to identify by name in the CURES data, and is working  
 11 with CA DOJ to provide notice to these prescribers in accordance with the governing statute.

12 In April 2020, Defendants served requests for production on Plaintiff for the production of  
 13 documents and data from all pertinent subdivisions of the City and County of San Francisco. When  
 14 the City and County was dismissed as a plaintiff, Plaintiff took the position that certain of its  
 15 subdivisions were not within Plaintiff's custody and control, requiring third-party subpoenas.  
 16 Defendants therefore served subpoenas on the San Francisco departments and entities that Plaintiff  
 17 has deemed outside of its custody and control, including the Department of the Environment,  
 18 Department of Emergency Management, Board of Supervisors, Controller's Office, Mayor's  
 19 Office, District Attorney's Office, Department of Human Resources, Health Service System, and  
 20 Human Services Agency.<sup>15</sup> These subdivisions have responded to the subpoenas, and the parties  
 21 are in the process of meeting and conferring regarding those responses. Most recently, Defendants  
 22 inquired about the productions from the Board of Supervisors and the Mayor's Office. Defendants  
 23 noted that the majority of the documents that these entities produced appeared to be dated from  
 24 2018 onward. Additionally, Defendants identified apparent gaps in the productions of both entities.  
 25 Plaintiff took the position that Defendant's challenges to the productions were untimely because  
 26 the parties did not meet and confer about Defendants' objections or the entities' responses earlier

27 \_\_\_\_\_  
 28 <sup>15</sup> Defendants have also served subpoenas on the San Francisco Superior Court and the University  
 of California San Francisco Hospital.

1 this year. Defendants maintain that their inquiries are timely because discovery is open. The parties  
2 will submit disputes to the Court as necessary.

3 Defendants are also pursuing third-party discovery from various state agencies, law  
4 enforcement entities, and third-party pharmacies, and have subpoenaed the Medical Board of  
5 California, the Dental Board of California, the California Board of Registered Nursing, and the  
6 United States Drug Enforcement Administration. Defendants have met and conferred with the  
7 Medical Board of California, the Dental Board of California, the California Board of Registered  
8 Nursing, and the United States Drug Enforcement Administration, and are negotiating the scope  
9 of their productions.

10  
11 DATED: September 21, 2021

Respectfully submitted,

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24  
25  
26  
27  
28 Actavis plc and is now known as Allergan Limited, does not waive but rather expressly preserves  
its objection to the Court's personal jurisdiction over it.

**ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: September 21, 2021

By: /s/ Kevin R. Budner

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**CERTIFICATE OF SERVICE**

I hereby certify that, on September 21, 2021, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Kevin R. Budner  
Kevin R. Budner

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